IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.MC.No. 1959 of 2007()

CC.1489/2003 of JFCM, KOTHAMANGALAM
CRIME NO.288 OF 2000 OF KOTHAMANGALAM POLICE STATION

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PETITIONER: ACCUSED:

K.P. VARKEY, AGED 59 YEARS,
S/O. PAILY, KOLEMBEL HOUSE, VELIYACHAL BHAGAM,
KEERAMPARA KARA, KEERAMPARA VILLAGE.

BY ADV. SRI.A.T.ANILKUMAR
SRI.P.DALBI EMMANUEL

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REP. BY THE SUB INSPECTOR, KOTHAMANGALAM POLICE STATION, IN CR.288/2000.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1959 of 2007

Dated this the 26th day of June, 2007

O R D E R

Petitioner is the accused in a prosecution, which was initiated on the basis of a final report submitted by the police. In the final report, allegations were raised under Sections 448, 506(1), 294(b) and 353 I.P.C. Trial has commenced. In the course of trial when CW2(PW1), the principal witness was examined, he made certain statements. The learned Magistrate on the basis of those statements felt that the material justifies a charge under Section 3 (i)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The learned Magistrate accordingly felt that the case must be committed to a Court of Sessions in view of Section 14 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Accordingly the impugned order was passed.

2. Aggrieved by that order, the petitioner has come to this Court. I am not considering the question whether a revision would have been maintainable and consequently whether powers under Section 482 Cr.P.C can be invoked or not. That technicality notwithstanding, I am of the opinion that in the facts and circumstances of the case, the learned Magistrate has not done anything wrong, which would justify the invocation of the revisional

jurisdiction under Section 401 Cr.P.C or the inherent jurisdiction under Section 482 Cr.P.C. I find no merit in the contention that the statement on oath given by PW1 when he was examined, even if accepted in toto, would not constitute the offence under Section 3(i)(x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The argument that earlier in the F.I statement or in the course of investigation such an allegation has not been raised is again not sufficient to persuade this Court to jump to the conclusion that the statement of PW1 on the relevant aspect on oath before the learned Magistrate must be discarded.

3. I do not in these circumstances find any vice in the impugned order which would justify the invocation of the revisional jurisdiction under Section 401 Cr.P.C or the inherent jurisdiction under Section 482 Cr.P.C. It is for the petitioner to appear before the Sessions Judge and raise all his contentions. Needless to say that I have not intended to express any final opinion on the disputed questions. The learned Sessions Judge will have to consider at the stage of framing charge as also at later stages whether the accused is entitled for discharge or acquittal on the allegations raised.

4. With the above observations, this Crl.M.C is, dismissed.

(R.BASANT, JUDGE)

rtr/-